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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,062	11/12/2003	Sushil Gupta	H-580	6361
41245	7590	03/30/2005	EXAMINER	
MARK LEVY & ASSOCIATES, PLLC PRESS BUILDING, SUITE 902 19 CHENANGO STREET BINGHAMTON, NY 13901			HAN, JASON	
			ART UNIT	PAPER NUMBER
			2875	

DATE MAILED: 03/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/706,062	GUPTA, SUSHIL
Examiner	Art Unit	
Jason M. Han	2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 24 February 2005.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-23 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 24 February 2005 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____ .  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/12/2003</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____ .                                  |

**DETAILED ACTION**

***Response to Arguments***

1. Applicant's argument with respect to the objection to the specification has been withdrawn.
2. Applicant's arguments with respect to Independent Claims 1 and 17 have been considered but are moot – applicant has amended the independent claims to recite the limitation "within an outer lamp housing disposed substantially centrally".
3. In response to applicant's argument, "the SHIMADA et al. housings do NOT contain light sources intended to illuminate the surgical site", it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).
4. In response to applicant's argument, "SHIMADA et al. neither teach nor suggest a pair of lamp housings adjacent one another as disclosed and claimed by Applicant", the examiner has suggested the prior art of Smith (U.S. Patent 5115382) in view of Shimada et al. (U.S. Patent 6554444), wherein the centrally located headlamp of Smith was modified to incorporate the two forward-facing LED lamps of Shimada (please further note the rejection below).
5. In response to applicant's argument, "to modify the SHIMADA et al. apparatus to attempt to derive Applicant's apparatus would destroy functionality thereof", the examiner disagrees that putting the two SHIMADA et al. lamp housing adjacent one another would render the goggles useless due to impairment of vision. In this case, the

examiner modified the reference of Smith to incorporate the two lamps of Shimada, whereby it is clear that two lamps instead of one would not impair a user's vision, as seen in Figure 1 of Smith.

6. In response to applicant's argument, "Smith fails to suggest any provision of independent light sources which may be converged", it should be noted that the examiner rendered the broadest interpretation [MPEP 2111] in the rejections, whereby all structural limitations within the scope of the claims were addressed.

7. Claims 5 and 6 stand rejected, as stated below, due to dependency on Independent Claim 1.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-4 and 7-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (U.S. Patent 5115382) in view of Shimada et al. (U.S. Patent 6554444).

9. With regards to Claim 1, Smith discloses a headlamp apparatus wherein there is an adjustable headband for placing on a user's head [Figure 1: (10)] and an outer lamp housing [Figure 1: (12)] with a light source [Figure 1: (66)] affixed centrally on the front side of the headband.

Smith does not teach the headband having at least two LED forward-facing lamp housings within the outer lamp housing.

Shimada teaches a gazing point illuminating device wherein there are two forward-facing LED lamps [Figure 1: (5)] affixed to goggles.

It would have been obvious to modify the centrally located headlamp of Smith to incorporate the two forward facing LED lamp housings of Shimada in order to provide a compact, lightweight, and powerful illumination device to be worn by a user. It is also beneficial that two lamps be provided in illuminating different objects at different orientations or in combination at a focused point.

In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate multiple lamp housings [Smith: Figure 6: (66, 74)] within the outer lamp housing [Smith: Figure 6: (70)], since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

It also would have been obvious to one having ordinary skill in the art at the time the invention was made to rearrange the two-forward facing LED lamp housings of Shimada adjacent and centrally disposed, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japiske*, 86 USPQ 70.

10. With regards to Claim 2, Smith in view of Shimada discloses the claimed invention as cited above. In addition, Smith teaches the lamp housing being independently pivotally affixed to the central position of the headband [Figure 5: (44); Column 6, Lines 14-60], whereby light output from the lamp housing may be converged at a predetermined distance in front [BROADLY INTERPRETED: Column 8, Lines 43-51].

11. With regards to Claim 3, Smith in view of Shimada discloses the claimed invention as cited above. In addition, Smith teaches the lamp housing providing means for focusing the light output [Figures 6&7; Column 6, Line 61 – Column 7, Line 14; Column 8, Lines 51-56].

12. With regards to Claim 4, Smith in view of Shimada discloses the claimed invention as cited above. In addition, Smith teaches the means for focusing the light having at least one reflector disposed proximate the light source [Figures 6&7; Column 7, Lines 15-19; Column 8, Lines 51-62].

13. With regards to Claim 7, Smith in view of Shimada discloses the claimed invention as cited above. In addition, Smith teaches the adjustable headband having a means for adjusting the headband to fit any user [Column 3, Line 64 – Column 4, Line 7].

14. With regard to Claims 8-9, Smith in view of Shimada discloses the claimed invention as cited above. In addition, Smith teaches a means for controlling the headlamp via a switch [Figure 3A: (84); Column 7, Lines 32-45].

15. With regards to Claim 10, Smith in view of Shimada discloses the claimed invention as cited above. In addition, Smith teaches the use of a battery [Figure 3A: (15); Column 7, Lines 34-35] in powering the lamp.

16. With regards to Claim 11, Smith in view of Shimada discloses the claimed invention as cited above. In addition, Smith teaches the use of multiple batteries for powering the lamp [Column 7, Lines 35-37].

17. With regards to Claim 12, Smith in view of Shimada discloses the claimed invention as cited above. In addition, Smith discloses the use of batteries attached to the headband for powering a headlamp [Column 1, Lines 50-54].

18. With regards to Claim 13, Smith in view of Shimada discloses the claimed invention as cited above. In addition, Smith discloses a battery housing [Figure 3A: (14)] disposed externally the headband.

19. With regards to Claim 14, Smith in view of Shimada discloses the claimed invention as cited above. In addition, Smith teaches a means whereby a user may replace one of the at least two batteries without interrupting light output via an electrical jack connected to a wall outlet [Column 3, Lines 10-39; Column 4, Lines 26-31]. Please further note that Smith teaches multiple batteries connected in parallel [Column 7, Lines 35-37], as well as the electrical jack connected in providing power parallel with the battery and lamp [Column 8, Lines 9-20].

20. With regards to Claim 15, Smith in view of Shimada discloses the claimed invention as cited above. In addition, it is inherent that the batteries provide means for regulating power in substantially maintaining constant light output (i.e. normally functioning dry cell batteries will not vary in voltage). If the applicant is referring to a circuit that regulates the power, then Smith further teaches electronics used to regulate voltage and current for the battery [Column 7, Line 46 – Column 8, Line 20].

21. With regards to Claim 16, Smith in view of Shimada discloses the claimed invention as cited above. In addition, Smith teaches a suction cup [Figure 5: (56)] disposed proximate an inside surface of the headband [Column 6, Lines 29-41].

22. Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (U.S. Patent 5115382) in view of Shimada et al. (U.S. Patent 6554444) as applied to Claim 4 above, and further in view of Fisher et al. (U.S. Patent 4288844).

Smith in view of Shimada teaches a headlamp as cited above wherein a lamp is surrounded by a reflector from the rear.

Neither Smith nor Shimada teach an additional front reflector arranged to cooperatively gather light output from the lamp and its surrounding reflector.

Fisher teaches an electrically focused surgical light whereby multiple reflectors are disposed in rear [Figure 1A: (12)] and front [Figure 1A: (13, 14)] of a light source [Figure 1A: (15, 16)]. It should be further noted that the reflectors are designed in a parabolic shape for the desired optical effect (Claim 6).

It would have been obvious to modify the headlamp of Smith with the two LED lamp housings of Shimada to further incorporate the multiple reflectors of Fisher in offering greater optical control for the light. One such advantage is a spot/flood capability existing to provide a large pattern exposure simultaneously with secondary spotlighting [see Abstract of Fisher]. It is also obvious that the lamp assembly of Smith is functionally equivalent wherein the reflector and lens serve cooperatively in focusing the light.

23. Claims 17-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (U.S. Patent 5115382) in view of Shimada et al. (U.S. Patent 6554444).

24. With regards to Claim 17, Smith discloses a headlamp apparatus wherein there is an adjustable headband for placing on a user's head [Figure 1: (10)] and an outer

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lamp housing [Figure 1: (12)] with a light source [Figure 1: (66)] affixed centrally on the front side of the headband, and a source of electrical power operatively connected to a lamp [Figure 1: (66)] within the housing [Figures 1-4: (12, 14, 80)].

Smith does not teach the headband having at least two LED forward-facing lamp housings within the outer housing, wherein at least one LED is disposed in each of said housings.

Shimada teaches a gazing point illuminating device wherein there are two forward-facing LED lamps [Figure 1: (5)] affixed to goggles, each having at least one LED.

It would have been obvious to modify the centrally located headlamp of Smith to incorporate the two forward facing LED lamp housings of Shimada in order to provide a compact, lightweight, and powerful illumination device to be worn by a user. It is also beneficial that two lamps be provided in illuminating different objects at different orientations or in combination at a focused point.

In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate multiple lamp housings [Smith: Figure 6: (66, 74)] within the outer lamp housing [Smith: Figure 6: (70)], since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

It also would have been obvious to one having ordinary skill in the art at the time the invention was made to rearrange the two-forward facing LED lamp housings of

Shimada adjacent and centrally disposed, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japiske*, 86 USPQ 70.

25. With regards to Claim 18, Smith in view of Shimada discloses the claimed invention as cited above. In addition, Smith teaches the lamp housing being independently pivotally affixed to the central position of the headband [Figure 5: (44); Column 6, Lines 14-60], whereby light output from the lamp housing may be converged at a predetermined distance in front [Column 8, Lines 44-51].

26. With regards to Claim 19, Smith in view of Shimada discloses the claimed invention as cited above. In addition, Smith teaches the electrical power having a rechargeable battery [Figure 3A: (15); Column 7, Lines 32-35].

27. With regards to Claim 20, Smith in view of Shimada discloses the claimed invention as cited above. In addition, Smith discloses a battery housing [Figure 3A: (14)] disposed externally the headband.

28. With regard to Claims 21-22, Smith in view of Shimada discloses the claimed invention as cited above. In addition, Smith teaches a means for controlling the headlamp via a switch [Figure 3A: (84); Column 7, Lines 32-45].

29. With regards to Claim 23, Smith in view of Shimada discloses the claimed invention as cited above, but does not specifically teach the headlight producing a light output having an intensity of approximately 40000 lux. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the light output to have an intensity approximately in the range of 40000 lux, since it has been held that discovering an optimum value of a result effective variable

involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215. In this case, a powerful illumination could benefit a user for a particular application.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following reference is cited to further show the state of the art pertinent to the current application, specifically a lighting device emitting an intense 40000 lux illumination: US Patent 5023763 to Le Gars.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason M. Han whose telephone number is (571) 272-2207. The examiner can normally be reached on 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JMH (3/18/2005)



JOHN ANTHONY WARD  
PRIMARY EXAMINER